

SUBCHAPTER D : RELEASE REPORTING AND CORRECTIVE ACTION

§334.71. Applicability.

The provisions of this subchapter are applicable to owners and operators of all underground storage tanks unless otherwise specified in Subchapter A of this chapter (relating to General Provisions).

§334.72. Reporting of Suspected Releases.

Owners and operators of underground storage (UST) tank systems must report to the appropriate district office or the Austin central office of the commission within 24 hours, and follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps) for any of the following conditions:

- (1) the discovery by owners and operators, or written notification by others to the owner or operator, of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);
- (2) unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless the system equipment is found to be defective but not leaking;
- (3) monitoring results from a release detection method required under §334.50 of this title (relating to Release Detection) or other method that indicates a release may have occurred unless:
 - (A) the monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or
 - (B) in the case of inventory control, a second month of data does not confirm the initial result; and
- (4) for UST systems which are required to be of double-wall construction or secondarily contained and for UST systems in which interstitial monitoring is being employed for compliance with the requirements of §334.50 of this title (relating to Release Detection), whenever monitoring or observation indicates a breach in either the primary wall or secondary barrier (whether or not a release of regulated substance into the environment has occurred), unless the primary or secondary barrier is determined to be intact, and the monitoring equipment is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result.

§334.73. Investigation Due to Off-Site Impacts.

When required by the executive director, owners and operators of underground storage tank (UST) systems must follow the procedures in §334.74 of this title (relating to Release Investigation and Confirmation Steps) to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that have been observed by the commission or brought to its attention by another party.

§334.74. Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan), owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under §334.72 of this title (relating to Reporting of Suspected Releases) within 30 days, using either the following steps or another procedure and schedule approved or required by the executive director.

(1) System test. Owners or operators must conduct tests (according to the requirements for tightness testing in §334.50 of this title (relating to Release Detection)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(A) Owners and operators must repair, replace, or upgrade the underground storage tank (UST) system, and begin corrective action in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(C) Owners and operators must conduct a site check as described in paragraph (2) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(2) Site check. Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored

substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(A) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with §§334.76-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan);

(B) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(3) In the event there is no evidence of a release after performing the tests required in paragraphs (1) and (2) of this section, the owner or operator must file a report which contains a detailed description of the investigative procedures followed in addressing the requirements of this section and which includes the results of all tests or monitoring performed. This report must be filed with the executive director not later than 45 days after the first observation of the suspected release or another schedule approved or required by the executive director. The owner or operator shall include with this report a statement which has been signed by the owner or operator certifying that the requirements of this section have been met.

§334.75. Reporting and Cleanup of Surface Spills and Overfills.

(a) Owners and operators of underground storage tank (UST) systems must contain and immediately clean up a spill or overfill, report to the commission within 24 hours, and begin corrective action in accordance with §§334.762-334.81 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; Free Product Removal; Investigation for Soil and Groundwater Cleanup; and Corrective Action Plan) in the following cases:

(1) spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons, or that causes a sheen on nearby surface water; and

(2) spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR Part 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons, and a spill or overfill of a hazardous substance that is less than the reportable quantity under CERCLA (40 CFR Part 302). If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the executive director.

§334.76. Initial Response to Releases.

Upon confirmation of a release in accordance with §334.74 of this title (relating to Release Investigation and Confirmation Steps) or after a release from the underground storage tank (UST) system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release:

- (1) report the release to the executive director (e.g., by telephone or electronic mail);
- (2) take immediate action to prevent any further release of the regulated substance into the environment, including shutting down the leaking UST system as determined necessary; and
- (3) identify and mitigate fire, explosion, and vapor hazards.

§334.77. Initial Abatement Measures and Site Check.

(a) Unless directed to do otherwise by the executive director, owners and operators must perform the following abatement measures:

- (1) remove as much of the regulated substance from the underground storage tank (UST) system as is necessary to prevent further release to the environment;
- (2) visually inspect any aboveground releases or exposed below ground releases and prevent further migration of the released substance into surrounding soils and groundwater;
- (3) continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
- (4) remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;
- (5) measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by §334.74 of this title (relating to Release Investigation and Confirmation Steps) or the closure site assessment of §334.55(e) of this title (relating to Permanent Removal from Service). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to groundwater and other factors as appropriate for identifying the presence and source of the release; and

(6) investigate to determine the possible presence of free product and begin free product removal as soon as practicable and in accordance with §334.79 of this title (relating to Free Product Removal).

(b) Within 20 days after release confirmation, owners and operators must submit a report to the executive director summarizing the initial abatement steps taken under subsection (a) of this section and any resulting information or data unless another reporting period is specified by the executive director.

§334.78. Site Assessment.

(a) Unless directed to do otherwise by the executive director, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measure in §334.75 and §334.76 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; and Initial Response to Releases). This information must include, but is not necessarily limited to the following:

- (1) data on the nature, cause, and estimated quantity of release;
- (2) data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;
- (3) results of the site check required under §334.77 of this title (relating to Initial Abatement Measures and Site Check);
- (4) results of the free product investigations required under §334.77 of this title (relating to Initial Abatement Measures and Site Check), to be used by owners and operators to determine whether free product must be recovered under §334.79 of this title (relating to Free Product Removal);
- (5) at a minimum, a determination of the degree and lateral and vertical extent of the on-site contaminated area (soil and groundwater) as required by the executive director;
- (6) identification of all potential exposure pathways as required by the executive director;
- (7) a determination of the site classification, in accordance with subsection (b) of this section;
- (8) an evaluation of the site pursuant to §334.203(1) of this title (relating to Risk-Based Criteria For Establishing Target Concentrations); and

(9) any other related information requested by the executive director.

(b) Site classification. Owners and operators must conduct site assessment actions to collect critical information in a manner approved by, or directed by, the executive director to determine the degree and nature of the release and identify potential receptors. Subsequently, the owner and operator must establish the classification of the release(s) according to the classification system established by the executive director. The classification system shall be used to qualitatively assess the degree of threat the release poses to public health and safety and the environment relative to all other leaking storage tank sites. The classification system will be utilized by the executive director as the primary method to coordinate leaking storage tanks sites.

(1) Owners and operators shall utilize the site classification scheme established by the executive director.

(2) Classification will be based upon the results of completed assessment actions and the best professional judgment of the registered corrective action specialist and the executive director.

(3) The classification system shall be used to regulate the timing of corrective action at individual sites when necessary to protect the viability of the Petroleum Storage Tank Remediation Fund.

(4) The classification of any one site may be adjusted upward or downward by the executive director as further site information is obtained or as exposure conditions change.

(5) Additional exposure scenarios may be added to the classification system by the executive director as situations are encountered that are not currently addressed in the system.

(6) The executive director may direct corrective actions out-of-classification order as necessary to ensure efficient use of available commission resources, including staff, time, and the funds from the Petroleum Storage Tank Remediation Fund.

(c) Within 45 days of release confirmation, owners and operators must submit the information collected in compliance with subsection (a) of this section to the executive director in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the executive director.

(d) Any documents submitted as a site assessment which do not contain all of the information required by this section shall not be accepted by the executive director, may be returned by the executive director without prejudice, and shall not qualify as a submitted site assessment for the purposes of this chapter. Return of such documents by the executive director without prejudice does not prevent the owner or operator from filing subsequent site assessment documentation.

§334.79. Free Product Removal.

At sites where investigations under §334.77 of this title (relating to Initial Abatement Measures and Site Check) or by other means, indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the executive director while continuing, as necessary, any actions required under §334.80 and §334.81 of this title (relating to Investigations for Soil and Groundwater Cleanup; and Corrective Action Plan). In meeting the requirements of this section, owners and operators must:

(1) conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges, or disposes of recovery byproducts in compliance with applicable local, state, and federal regulations;

(2) use abatement of free product migration as a minimum objective for the design of the free product removal system;

(3) handle any regulated substances in a safe and competent manner to prevent fires, explosions, or other health hazards; and

(4) unless directed to do otherwise, prepare and submit to the executive director, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(A) the name of the person(s) responsible for implementing the free product removal measures;

(B) the estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(C) detailed information pertaining to the type of free product recovery system used;

(D) whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(E) the type of treatment applied to, and the effluent quality expected from any discharge;

(F) the steps that have been, or are being taken to obtain necessary permits or other authorizations for any discharge;

(G) the disposition of the recovered free product; and

(H) any other related information requested by the executive director.

§334.80. Investigation for Soil and Groundwater Cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release, the presence and concentrations of dissolved regulated substance contamination in the groundwater, and the risk associated with the release, owners and operators must conduct investigations of the release, the release site, and the surrounding area (including adjacent areas not under ownership by the owner or operator) as necessary to determine the extent of the release if any of the following conditions exist:

(1) there is evidence that groundwater wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) free product is found to need recovery in compliance with §334.79 of this title (relating to Free Product Removal);

(3) there is evidence that contaminated soils may be in contact with groundwater (e.g., as found during conduct of the initial response measures or investigations required under §§334.75 through 334.79 of this title (relating to Reporting and Cleanup of Surface Spills and Overfills; Initial Response to Releases; Initial Abatement Measures and Site Check; Initial Site Characterization; and Free Product Removal)); or

(4) the executive director requests an investigation, based on the potential effects of contaminated soil or groundwater on nearby surface water or groundwater resources.

(b) Owners and operators must submit the information collected under subsection (a) of this section as soon as practicable, or in accordance with a schedule established by the executive director.

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§334.81. Corrective Action Plan.

(a) At any point after reviewing the information submitted in compliance with §§334.76-334.78 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; and Initial Site Characterization), the executive director may require owners or operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and groundwater. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the executive director. Alternatively, owners and operators may, after fulfilling the requirements of §§334.76-334.78 of this title (relating to Initial Response to Releases; Initial Abatement Measures and Site Check; and Initial Site Characterization), choose to submit a corrective action plan for responding to contaminated soil and groundwater. In either case, owners and operators are responsible for submitting a plan that provides for adequate

protection of human health, safety, and the environment as determined by the executive director, and must modify their plan as necessary to meet this standard.

(b) The executive director will approve the corrective action plan after ensuring that implementation of the plan will adequately protect human health, safety, and the environment as determined using risk-based corrective action to establish target cleanup levels and case closure criteria. In making this determination, the executive director will consider the following factors as deemed appropriate:

- (1) the physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;
- (2) the hydrogeologic characteristics of the facility and the surrounding area;
- (3) the proximity, quality, and current and future uses of nearby surface water and groundwater;
- (4) the potential effects of residual contamination on nearby surface water and groundwater;
- (5) an exposure assessment;
- (6) a determination of the most effective and feasible method of remediation;
- (7) an estimate of the time to achieve cleanup;
- (8) a remedial progress monitoring plan;
- (9) an operation and maintenance plan; and
- (10) any information assembled in compliance with this subchapter.

(c) Owners and operators shall submit information pertaining to the items in subsection (b) of this section upon request of the executive director.

(d) Any documents submitted as a corrective action plan which do not contain all of the information required by this section shall not be accepted or approved by the executive director, may be returned by the executive director without prejudice, and shall not qualify as a submitted corrective action plan for the purposes of this chapter. Return of such documents by the executive director without prejudice does not prevent the owner or operator from filing subsequent corrective action plan documentation.

(e) Upon approval of the corrective action plan or as directed by the executive director, owners and operators must implement the plan, including modifications to the plan made by the executive director. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the executive director.

(f) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and groundwater before the corrective action is approved provided that they:

(1) notify the executive director of their intention to begin cleanup;

(2) comply with any conditions imposed by the executive director, including halting cleanup or mitigating adverse consequences from cleanup activities;

(3) incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the executive director for approval; and

(4) prior to discharge of any waste, obtain necessary authorization from the commission.

(g) In order to verify the effectiveness of corrective action taken by the owner or operator, the executive director may require continued monitoring of soil, vapors, groundwater, and/or surface water.

(h) Upon completion of corrective action taken in response to the requirements of this section, the owner or operator shall submit a statement signed by the owner or operator which certifies that the requirements of this section and the procedures in the approved corrective action plan have been accomplished.

(i) The commission shall issue a closure letter in response to the certification of completion of corrective action requirements submitted by the owner or operator as required in subsection (h) of this section.

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§334.82. Public Participation.

(a) For each confirmed release that requires a corrective action plan, the executive director shall provide notice to the public by means designated to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The executive director may require the owner or operator to perform or implement the public notices in this section and to verify that such activity has been satisfactorily completed.

(c) The executive director shall give public notice that complies with subsection (a) of this section if implementation of an approved corrective plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the executive director.

§334.83. Emergency Orders.

(a) Notwithstanding any other provision of this subchapter, the executive director may issue orders under this section to the owner or operator of an underground storage tank (UST), if it appears that:

(1) there is an actual or threatened release of a regulated substance from a UST; and

(2) the executive director determines that more expeditious corrective action than is otherwise provided for under this subchapter is necessary to protect the public health and safety or the environment.

(b) An order issued under subsection (a) of this section may prohibit a person from allowing or continuing the release or the threatened release and require the person to take the actions necessary to eliminate the release or threatened release.

(c) An emergency order issued under this section shall be:

(1) mailed by certified mail, return receipt requested, to each person identified in the order; or

(2) hand delivered to each person identified in the order; or

(3) On failure of service by certified mail or hand delivery, service by publication one time in the Texas Register and one time in a newspaper with general circulation in each county in which any of the persons identified in the order had a last known address.

(d) An emergency order issued under this section does not require notice or an adjudicative hearing before its issuance. If the executive director issues an order under this section, the commission shall fix a time and place for a hearing to affirm, modify, or set aside the emergency order issued by the executive director. The hearing before the commission shall be held as soon as practicable after the issuance of the emergency order.

§334.84. Corrective Action by the Commission.

(a) The commission may undertake corrective action in response to a release or a threatened release if:

(1) the owner or operator of the underground storage tank is unwilling to take appropriate corrective action;

(2) the owner or operator of the underground storage tank cannot be found;

(3) the owner or operator of the underground storage tank, in the opinion of the executive director, is unable to take the corrective action necessary to protect the public health and safety and/or the environment; or

(4) notwithstanding any other provision of this subchapter, the executive director determines that more expeditious corrective action than is provided by this subchapter is necessary to protect the public health and safety or the environment.

(b) The commission may retain agents to perform corrective action it considers necessary to carry out the provisions of this subchapter. The agents shall operate under the direction of the executive director.

§334.85. Management of Wastes.

The management and disposition of waste generated as a result of a release of regulated substances associated with an underground storage tank must be in accordance with all applicable federal and state requirements and in a manner that will not result in adverse impacts to human health and safety and the environment.

Texas Natural Resource
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Chapter 334
Underground and Aboveground Storage Tanks

Page 13

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